



The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

November 8, 2005

Philip Aylward  
d/b/a Valley Artesian Well Company, Inc.  
PO Box 203  
Ascutney, VT 05030

Re: Docket No. AF 05-085 Administrative Fine by Consent Agreement

Dear Mr. Aylward:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**

Michael P. Sclafani,  
Legal Assistant

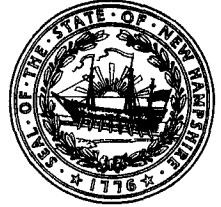
cc: Michael J. Walls, DES Assistant Commissioner  
Harry T. Stewart, P.E., Director, Water Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Rick Schofield, DES WD





The State of New Hampshire  
**Department of Environmental Services**

Michael P. Nolin  
 Commissioner



Philip Aylward  
 d/b/a Valley Artesian Well Company, Inc.  
 P.O. Box 203  
 Ascutney, VT 05030

Re: Water Well Completion Reports

**ADMINISTRATIVE FINE  
 BY CONSENT**

**No. AF 05-085**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Philip Aylward, pursuant to RSA 482-B and Env-C 616. This Administrative Fine by Consent is effective upon signature by all parties.

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. Philip Aylward is an individual apparently doing business in New Hampshire as Valley Artesian Well Company, Inc., with a mailing address of Post Office Box 203, Ascutney, Vermont 05030.

**III. BACKGROUND**

1. RSA 482-B regulates water well contractors and pump installers and establishes the New Hampshire Water Well Board ("the Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "the Water Well Rules"). Under RSA 482-B:8 and 482-B:16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. RSA 482-B requires a person to obtain a water well contractor license from the Board prior to engaging in the business of constructing a well.
4. Philip Aylward d/b/a Valley Artesian Well Company Inc., is a licensed water well contractor in the state of New Hampshire, holding license No. 245.



5. RSA 482-B:10 and We 801 require a water well contractor to file a well completion report with the Board within 90 days following completion of a water well.
6. On June 5, 2003 Philip Aylward d/b/a Valley Artesian Well Company Inc., was placed on probation by the Board for a period of two years for failing to file timely well completion reports.
7. On August 4, 2005 the Board held an administrative hearing to show cause why the water well contractor license held by Philip Aylward d/b/a Valley Artesian Well Company Inc., should not be suspended for failing to file well completion reports.
8. On July 7, 2005 Mr. Aylward submitted 16 well completion reports to the Board for wells constructed in New Hampshire in 2004 and 2005. Twelve of the well completion reports submitted were beyond the 90-day filing period.
9. On July 18, 2005 Mr. Aylward submitted 8 well completion reports to the Board for wells constructed in New Hampshire in 2004 and 2005. Six of the well completion reports submitted were beyond the 90-day filing period.

#### **IV. ALLEGATION**

1. Philip Aylward d/b/a Valley Artesian Well Company Inc., has violated RSA 482-B:10 and We 801 by failing to submit 18 well completion reports to the Water Well Board, within 90 days of completion, for the wells constructed in New Hampshire in 2004 and 2005.

#### **V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. Env-C 616.02(e) specifies a fine of \$1.00 per day for each calendar day after 90 days following completion of the well, up to \$100.00 per report, for failing to file a well completion report in accordance with RSA 482-B:10 and We 801.
2. Twelve of the 18 reports submitted late, were submitted more than 100 days after the 90-day reporting period following completion of the well. Env-C 616.02(e) specifies a maximum fine of \$100 per report, or \$1,200.00 for the 12 reports submitted over 100 days late.
3. Six of the 18 reports submitted late, were submitted less than 100 days after the 90-day reporting period following completion of the well. Env-C 616.02(e) specifies a fine of \$1.00 per day for each calendar day after 90 days following completion of the well. The administrative fine is calculated for each of these six well reports in the following table:



<u>Date of Completion</u>	<u>Date of Submittal</u>	<u># Days Late</u>	<u>Admin. Fine per Day</u>	<u>Admin. Fine for Report</u>
1-13-05	7-7-05	84	\$1.00	\$84.00
2-16-05	7-7-05	50	\$1.00	\$50.00
3-22-05	7-7-05	16	\$1.00	\$16.00
1-20-05	7-18-05	88	\$1.00	\$88.00
2-02-05	7-18-05	75	\$1.00	\$75.00
3-24-05	7-18-05	25	\$1.00	<u>\$25.00</u>
Total				\$338.00

4. The total fine authorized under Env-C 616 for the 18 water well completion reports submitted belatedly by Philip Aylward d/b/a Valley Artesian Well Company Inc., in July of 2005 is \$1,538.

5. Of the total fine in the amount of \$1,538, DES agrees to suspend \$923, or about 60 percent, contingent on no further violations of RSA 482-B:10 and We 801 for a period of one year from the date of execution of this Administrative Fine by Consent by Philip Aylward or any person authorized to construct water wells in New Hampshire under New Hampshire Water Well Contractor license No. 245.

6. If Mr. Aylward fails to maintain compliance during the one-year period, the suspended portion of the proposed fines, in the amount of \$923 shall become due and payable immediately. If Mr. Aylward maintains compliance for the prescribed period, the suspended portion of the fines shall be waived.

7. Philip Aylward agrees to pay the remaining \$615 upon execution of this Administrative Fine by Consent.

8. Payment under Paragraph V.7 and any payment that becomes due pursuant to Paragraphs V.5 and V.6 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095

9. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.



10. By executing this Administrative Fine by Consent, Philip Aylward waives his right to a hearing on or any appeal of the administrative fines identified in Paragraphs V.2 through V.4, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

11. The effective date of this Administrative Fine by Consent will be the date on which it is signed by Philip Aylward, the Director of the Water Division, and the Commissioner of DES.

12. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

**COPY**

Philip Aylward, Owner

11/11/05  
Date

Department of Environmental Services

**COPY**

Harry T. Stewart, P.E., Director  
Water Division

11/07/05  
Date

**COPY**

Michael F. Jolly, Commissioner

11 07 05  
Date

cc: NH Water Well Board  
ec: Sarah Pillsbury, Administrator, WSEB  
Kerry Barnsley, DES Compliance Attorney  
Anne Edwards, Esq. - NHDOJ  
Jennifer J. Patterson, Esq. - NHDOJ  
DES PIP Office